IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LG) NO.1756 OF 2005

Hindustan Lever Employees Union. .. Petitioner
v/s.
1. The Assistant Commissioner of Labour (Conciliation) & ors. .. Respondents

Mr.K.K.Singhavi, Senior Advocate with Mr.S.K.Talsania i/by Mr.Kiran S. Bapat for petitioner.

Mr.P.K.Rele, Senior Advocate with Mr.R.P.Rele and Mr.Vinod Tayade i/by Mr.Piyush Shah for res.No.3.

Mr.R.M.Sawant, Govt. Pleader for res.Nos.1 & 2.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 19th July 2005

ORAL ORDER : (Per H.L. Gokhale, J.) :

1. This petition seeks to challenge the order dated 2nd July 2005 passed by respondent No.1-Assistant Commissioner of Labour Mumbai, whereby he held that the dispute raised by the petitioner-Union, vide its letter dated 7th December 2004 does not survive in view of the order dated 28th February 2005 passed by the High Court in terms of the consent terms filed before the High Court. The petition further seeks a stay of this order and the directions to continue the conciliation proceedings and then decide about the reference of the industrial dispute between the petitioner-Union on the one hand and respondent

No.3-Company on the other.

2. Respondent No.3 filed a reply to the petition to begin with and then to the amended Writ Petition. We have heard the petition finally at the admission stage. Counsel for the parties have made their submissions.

3. Brief facts leading to this petition are as follows:-

. Sometimes in the year 1989, respondent No.3 had proposed a lock-out. The petitioner-Union filed a Complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU and PULP Act, 1971", for short) bearing Complaint (ULP) No.855 of 1989. That Complaint was allowed by the Industrial Court. A Writ Petition filed thereagainst was dismissed by a learned Single Judge and an Appeal therefrom was also later-on dismissed by a Division Bench.

4. Subsequently respondent No.3-Management decided to transfer its activities in the factory at Sewri, Mumbai to one M/s.Bon Limited. The petitioner-Union served demands on 7th December

2004. The schedule to those demands included four items. Firstly, a declaration that the re-organisation including transfer of the Factory at Sewri, which is a subsidiary, is not legal, genuine, not justified or bona fide. Secondly, the Management shall not transfer the workers to any such subsidiary without the consent of the workmen or Agreement. Thirdly, in the event, any such transfer takes place, the workmen of the Mumbai Factory should continue to remain as workers of respondent No.3 and lastly that respondent No.3 or its officers, agents, successors and assigns shall give productive and gainful work and pay wages and other benefits to the workmen of the Factory at Sewri, Mumbai. The demands led to discussions before the Conciliation Officer. At that stage, the Management sought to enforce its decision. It led to filing of another Complaint being Complaint No.798 of 2004 by the petitioner-Union to the Industrial Court. An interim order was refused therein and, therefore, the petitioner-Union carried the matter to the High Court by a writ petition being Writ Petition No.269 of 2005. A learned Single Judge heard the matter and disposed it of by passing an order on 28th February 2005 on the basis of the consent of the parties. The learned Judge recorded that it

was agreed amongst the parties that no further reasons be recorded than whatever were recorded in the order. It is this order which is the basis of the impugned decision of the Assistant Labour Commissioner. Therefore, it is desirable that we produce this order in its entirety. This order dated 28th February 2005 reads as under:-

> " After the Petition has been heard, Learned Counsel appearing on behalf of the Petitioner and the Respondents are agreed that the following order may be passed by consent and without any further reasons being recorded.
>
> Without prejudice to the rights and contentions of both the parties, the following arrangement is worked out:
>
> (a) As and when the transfer of the Bombay Factory Undertaking at Sewri takes place to M/s.Bon Limited, the concerned workers would be given the option of being transferred along with the Undertaking subject to the conditions set out in the proviso to Section 25 FF of the Industrial Disputes Act, 1947.

(b) The Management reserves its rights to take steps in accordance with the Industrial Disputes Act, 1947, in respect of such of the workmen who do not get transferred with the Undertaking.

(c) The Assistant Commissioner of Labour shall take steps expeditiously to conclude proceedings pending before him with respect to the Charter of demands dated 7th December 2004 in accordance with law; and

(d) All questions of law and facts are expressly kept open.

The Petition shall stand disposed of in the aforesaid terms with no order as to costs. "

5. After passing of this order by the learned Single Judge as mentioned above, respondent No.3 filed a Special Leave Petition against the earlier referred order of the High Court passed on 28th December 2004 which was an order of a Division Bench, confirming the order of a learned Single

Judge in Writ Petition No.287 of 1995 arising out of Complaint (ULP) No.855 of 1989. This SLP came up for consideration before the Apex Court on 28th March 2005 when the Court passed the following order:-

> " Issue notice.
>
> Mr.Bharat Sangal, learned counsel accepts notice on behalf of the respondents.
>
> Status-quo as on today shall be maintained regarding the possession and ownership as well as the present situation in the factory."

After the High Court passing the order dated 28th February 2005 in Writ Petition No.269 of 2005, Respondent No.3 moved an interim application for modification of the above order dated 28th March 2005 passed by the Apex Court. That interim application in the SLP came up before the Apex Court on 9th May 2005 when the Court passed the following order:-

> " The I.A. has been filed for modification of the order of status quo

passed by this Court on 28.3.2005. It is brought to our notice that on 28.2.2005 parties agreed to certain terms before the Bombay High Court. We make it clear that the order of status quo as directed by us will be subject to order by the consent of the parties as recorded by the Bombay High Court on 28.2.2005.

Rejoinder, if any, may be filed within two weeks. List this petition for final disposal on any miscellaneous day. "

6. This application for modification was obviously filed to emphasize to the Apex Court the order passed by the learned Single Judge on 28th February 2005. As can be seen from the order of the Apex Court, the Court has noted the order dated 28th February 2005 in its order dated 9th May 2005. It has recorded that the parties have agreed to certain terms in that order before the High Court and thereafter, made it clear that the order of status quo passed earlier will be subject to the order by consent of the parties as recorded by the High Court on 28th February 2005. As narrated earlier, based on this High Court order, the Assistant Labour Commissioner has declined to

enter in conciliation by his impugned order passed on 2nd July 2005.

7. Mr.Singhvi, learned Counsel appearing for the petitioner-Union, submitted that there was no occasion for the Assistant Labour Commissioner to close the conciliation by the impugned order. The order of the Labour Commissioner clearly refers to the order dated 28th February 2005 of the learned Single Judge and his submission. If one looks to the order of the learned Single Judge, it cannot be said that it conveys that the dispute before the Assistant Labour Commissioner was to be closed. The petition was filed with an urgency by submitting that in the meanwhile the Management has proceeded to transfer the undertaking to this M/s.Bon Limited and that the transfer was bad in law. Mr.Singhvi did try to canvass that the Management could not have done it. However, having seen clauses (a) and (b) of the order passed by the learned Single Judge, it is not possible for us to accept this submission.

8. Mr.Rele, learned Counsel appearing for respondent No.3-Company, on the other hand, tried to contend that the Labour Commissioner was right in closing the conciliation. This submission also

cannot be accepted in view of clause (c) of the order passed by the learned Single Judge. It is material to note that the learned Single Judge was moved subsequently for clarification of the order dated 28th February 2005. On 9th March 2005, the learned Judge passed an order stating that the order dated 28th February 2005 was clear and there was no need for further clarification.

9. It is to be noted that in the meanwhile, respondent No.3 has proceeded to transfer the undertaking to this M/s.Bon Limited. Respondent No.3 has given a notice to the workmen that if they are inclined, they should join and if they are not so inclined, they should give in writing that they are not inclined to join. An affidavit in reply has been filed to this petition as well as the amendments which were granted therein. In the reply to the amended petition, it has been specifically stated that some 700 workmen have joined the new Management and have reported on duty. Some 40 workmen have given in writing that they do not want to join. As far as the other workmen are concerned, they have an option to inform that they are not so joining which they have to exercise by 5 p.m. today evening. If they do not exercise any such option, they will be

deemed to have continued under the new Management.

10. As far as the closing of te conciliation is concerned, Mr.Rele submitted that the order passed by the learned Single Judge took care of the entire dispute between the parties. In his submission, the arrangement provided in clauses (a) and (b) thereof contained a complete settlement of the disputes and, therefore, the Conciliation Officer was right in coming to the decision that he had arrived at viz. that there was no need to intervene in conciliation. In our view, the order passed by the learned Single Judge is quite clear. These clauses viz. clauses (a), (b) and (c) are agreed by the parties without prejudice to their rights and contentions. It is also stated in clause (d) that all questions of law and facts are expressly kept open and thereafter the petition was disposed of. Therefore, if the questions of law and facts were kept open, they were kept open for the conciliation which was specifically referred in clause (c). If the parties had agreed to conclude the controversy, they would have stated that the entire controversy and the disputes were settled. In that case, clause (c) would not have figured in the settlement. Clause (c) of this order clearly

means that the conciliation proceedings are surviving and the Conciliation Officer was expected to proceed with and conclude the same at the earliest.

11. Mr.Rele submitted that clauses (a) and (b) cover the entire controversy. However, when the learned Judge had used the term "arrangement" prior to these two clauses, it will have to be read as an interim arrangement pending the conciliation and further determination which is contemplated in clause (c). Thus, clauses (a) and (b) clearly mentioned that if the workmen are inclined to join the new Management, they can join it and if they do not want to join, it will be open for the Management to take necessary action under the law. At the same time, clause (c) kept the conciliation surviving. Effect of this will be that whereas the Management will be permitted to bring about re-organisation which it wants to bring about with immediate effect, the legality of this decision will remain under consideration before the Conciliator or before the appropriate Authority thereafter. Mr.Rele submitted that the dispute no longer survives. It is not possible to accept this submission. The workers will, as stated above, certainly join under the new

Management, if they want to join it but their submissions and demands are not given up which is clear from clause (d) of the order. They have not stated that they are giving up their demands with respect to the question of legality and with respect to the action taken by the Management. Therefore, the forum which is otherwise available to them under the law was kept open by the learned Single Judge under clause (c). In the absence of there being any specific agreement on the entire dispute, the learned Judge could not have closed that avenue to the workers. Result of this will be that in the event the matter is subsequently settled or decided either in conciliation or later-on before the appropriate Authority, the Management may as well succeed in it. However, if it does not succeed, it will be open to the workmen, whose relationship is now terminated, to canvass that they have a right based on the termination being bad and illegal. Similarly if the transfer is held to be bad, the workmen who joined the new Management will be entitled to contend that they have a right to go back to Respondent No.3 and that the earlier Management must take up the undertaking from one to whom it is now transferred. In our view, the order passed by the learned Single Judge is, therefore, clear

and the Assistant Commissioner of Labour was in error in concluding the proceedings before him by declining to intervene.

12. In the circumstances, we allow the petition and set aside the order dated 2nd July 2005 passed by the Assistant Commissioner of Labour, Mumbai, and revive the proceedings before him. He will decide the revived conciliation expeditiously as directed by the learned Single Judge under clause (c) of the order dated 28th February 2005.

13. Petition stands disposed of.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)